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ABSTRACT

On January 26, 1971 the Chairman of the Education Commission of the States issued a statement of principles and possible model legislation for the various states in the highly complex area of determination of student residency for tuition purposes at public institutions of higher education. The original model legislation was related to the qualifications of legal age and length of domicile for voting in the state. Since that time, a constitutional amendment has been ratified by the states lowering the national voting age to 18. In addition, many states have correspondingly changed state voting requirements and a few states have changed the age of majority to 18. Due to these changes a revised version of the model legislation was developed based on the concept of domicile of the student or his parents or guardians. Such model legislation can serve only as a guide and will need to be modified to meet the unique situation in the individual states. (HS)

EDUCATION COMMISSION OF THE STATES
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ED 066111

MEMORANDUM

TO: State Education Committee Chairmen, State Senate President Pro tem, Speakers of the House, Legislative Reference Bureaus, State Higher Education Executive Officers, Education Commission of the States' Liaison Committee

FROM: Robert W. Scott, Governor of North Carolina
Chairman, Education Commission of the States, 1971-1972

DATE: August 30, 1971

SUBJECT: Model Legislation on Student Residency

On January 26, 1971, Governor Russell Peterson of Delaware then Chairman of the Education Commission of the States sent for your information and consideration a statement of principles and possible model legislation for the various states in the highly complex area of determination of student residency for tuition purposes at public institutions of higher education. The original model legislation was related to the qualifications of legal age and length of domicile for voting in the state.

Since January, as you are well aware, a constitutional amendment has been ratified by the states lowering national voting age to 18. In addition, many states have correspondingly changed state voting requirements to match federal requirements and a few states have changed the age of majority to 18. As a result the model legislation and principles have been reconsidered in the light of the changed situation.

I am sending now for your consideration a revised version of the model legislation based on the concept of domicile of the student or his parents or guardians. As indicated in Governor Peterson's letter we fully recognize that such model legislation can serve only as a guide and will need to be modified to meet the unique situation in the individual states. We hope, however, that this model legislation will be useful in helping to think through the present situation and arrive at a reasonable solution to this complex problem on an equitable basis both to students and to the interests of the states.

RWS:Mmb

Enclosures

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Education Commission of the States
1860 Lincoln Street
Denver, Colorado 80203

Revised 8/25/71

MODEL LEGISLATION ON STUDENT RESIDENCY

AN ACT
PROVIDING FOR CLASSIFICATION
OF STUDENTS FOR TUITION PURPOSES AT PUBLIC
INSTITUTIONS OF HIGHER EDUCATION

Be it enacted by the Legislature of the State of _____.

Section 1. Legislative Intent. It is the intent of the Legislature that the state institutions of higher education in the State of _____ shall apply uniform rules, as described in this Act and not otherwise, in determining whether students shall be classified as in-state or out-of-state students for tuition purposes.

Section 2. Definitions. Wherever used in this Act:

(1) The word "institution" shall mean a college, university, junior college or vocational technical institute supported by appropriations made by the legislature of this state.[1]

(2) The word "residence" or "reside" shall denote continuous and permanent physical presence within this State, provided that temporary absence for short periods of time shall not affect the establishment of a residence.

(3) The word "domicile" shall denote a person's true, fixed, and permanent home and place of habitation. It is the place where he intends to remain, and to which he expects to return when he leaves without intending to establish a new domicile elsewhere.

(4) The term "emancipated person" shall mean a person who has attained the age of 18 years, and whose parents have

entirely surrendered the right to the care, custody and earnings of such person and who no longer are under any legal obligation to support or maintain such person. If any of the aforesaid tests are not met, said person shall be deemed an "unemancipated person".

(5) The word "parent" shall mean a person's father; or if he has no father, his mother; or if one parent has custody of an unemancipated person, the parent having custody; or if there is a guardian or legal custodian of an unemancipated person, then such guardian or legal custodian, provided, that there are not circumstances indicating that such guardianship or custodianship was created primarily for the purpose of conferring the status of an in-state student on such unemancipated person.

(6) Attendance at a school or schools in this state shall be deemed "continuous" if the person claiming continuous attendance has been enrolled at a school or schools in this state as a full-time student, as such term is defined by the governing body of said school or schools, for a normal academic year in each calendar year, or the appropriate portion or portions of such years, since the beginning of the period for which continuous attendance is claimed. Such person need not attend summer sessions or other such intersession beyond the normal academic year in order to render his attendance "continuous".

(7) The word "his" shall apply to the female as well as the male sex unless the context otherwise clearly requires.

Section 3. Rules for Determination of Status.

(1) Every person having his domicile in this State shall be entitled to classification as an in-state student for tuition purposes. Except as otherwise provided in this Act, no person having his domicile elsewhere than in this State shall be eligible for classification as an in-state student for tuition purposes.

(2) The domicile of an unemancipated person is that of his parent.

(3) Upon moving to this State, an emancipated person employed full-time, who provides persuasive evidence of domicile may apply for in-state classification for his spouse and unemancipated children; and, provided that said person is not himself in this State primarily as a full-time student, his spouse and unemancipated children may at once be so classified, and may continue to be so classified so long as said person continues his domicile in this State.

(4) Any person who remains in this State when his parent, having theretofore been domiciled in this State, removes from this State, shall be entitled to classification as an in-state student (until attainment of the degree for which he is currently enrolled) so long as his attendance at a school or schools in this State shall be continuous.

(5) The spouse of any person who is classified or is eligible for classification as an in-state student shall

likewise be entitled to classification as an in-state student.

(6) An unemancipated person whose parent is a member of the Armed Forces and stationed in this State pursuant to military orders shall be entitled to classification as an in-state student. The student, while in continuous attendance toward the degree for which he is currently enrolled shall not lose his residence when his parent is thereafter transferred on military orders.

(Alternative to Section 4(6). (If (7) is chosen, delete Section 4(6) page 6).)

(7) A member of the Armed Forces of the United States, stationed in this State on military orders except members of the Armed Forces specifically assigned for educational purposes to state supported institutions of higher education, shall be entitled to classification as an in-state student while on active duty in this State pursuant to such orders.[2]

Section 4. Presumptions. Unless the contrary appears to the satisfaction of the (registering authority)[3] of the institution at which a student is registering, it shall be presumed that:

(1) The establishment of a new domicile in this State by an emancipated person has not occurred until he has resided in this State for the period of time required for voting for State officials in this State, prior to the opening day of the period of instruction during which he first proposes to attend an educational institution in this State.

(2) No emancipated person shall be deemed to have gained residence while attending any educational institution in this State as a full-time student, as such status is defined by the governing board of such institution, in the absence of a clear demonstration that he has established domicile in the State.

(3) Once established, a domicile is not lost by mere absence unaccompanied by intention to establish a new domicile.

(4) The domicile of a married woman is normally that of her husband.

(5) The domicile of any emancipated person receiving regular financial assistance from his parent, or whose parent's income was taken into account by any private or governmental agency furnishing financial educational assistance to such person, including scholarships, loans, or otherwise, is that of his parent. Notwithstanding the definition of "parent" contained in Section 2(5) of this Act, in the event such person's parents have separate domiciles, his domicile shall be that of the parent furnishing him the greater financial assistance, or the parent having the larger income if neither furnishes such assistance.

(Alternative to Section 3(7). (If (6) is chosen, delete Section 3(7) on page 4).)

(6) A person does not gain or lose in-state status by reason of his presence in any state or country while a member of the Armed Forces of the United States; provided,

that a member of the Armed Forces may obtain in-state status for himself and his dependents by establishing his domicile in this state.[4]

Section 5. Regulations; Appeal. The (here insert a designation of a state-wide agency concerned with higher education)[5] shall adopt guidelines applicable to all institutions in the State that will insure uniform criteria to aid the institutions in determining the tuition status of any student and that will establish uniform procedures for review and appeal of that status. Further appeal from a final determination denying in-state status to any student may be initiated by the filing of an action in (insert court of appropriate jurisdiction) in the judicial district in which the institution is located. An appeal from the said court shall lie as in all civil actions.

Section 6. Waiver of Tuition. Where not otherwise restricted or prohibited by law, the governing board of any institution may waive tuition or fees or both in whole or in part and nothing contained in this Act shall be construed as prohibiting or limiting that right.[6]

Section 7. Quotas, Standards, Etc. Unless otherwise restricted or prohibited by law, an institution or its governing board may establish quotas, standards for admission, standards for readmission, or other terms and requirements governing persons who are not in-state students for purposes of higher education and nothing contained in this Act shall be construed as prohibiting or limiting that right.

Section 8. Reciprocal Agreements. The (here insert a designation of a state-wide agency concerned with higher education)[5]

may enter into agreements with appropriate agencies and institutions of higher education in other states and foreign countries providing for the reciprocal exchange of students in higher educational institutions in this State and such other states or countries. Such agreements may include provisions for waiver or reduction of non-resident tuition for designated categories of students and may include contractual payments to such other state or country, subject to the availability of appropriations. Such agreements shall have as their purpose the mutual improvement of educational advantages for residents of this State and such other states or countries with whom agreements may be made.

Section 9. Repeals. The following statutes are hereby repealed as of the effective date of this Act: (here insert designation of statutes to be repealed.)

Section 10. Effective Date. This Act shall take effect on (here insert date) .

FOOTNOTES

1. Modification of this definition may be necessary in some states in order to take into account differing methods of financing an organization of higher education in the various states. E.G.: In some states, community colleges are largely locally supported and residency is defined in terms of community or junior college district. Also, in some states, vocational-technical institutions because of differing methods of financing and/or organization may be excluded.

2. See alternative to this section as set forth in Section 4(6). If alternative is adopted, delete this subsection.

In deciding between alternatives, consideration should be given to the fact that service-supported educational programs pay to eligible servicemen on active duty 75% of the charges of educational institutions for tuition or expenses of off-duty training.

3. Substitute title of appropriate official or office.

4. See footnote two (2). If Section 3(7) is adopted, delete this subsection.

5. In states where no such state-wide agency exists or where constitutional provisions except some institutions from such state-wide agency, modify as appropriate.

6. States considering adoption of this Act might also want to consider limiting by percentage of total enrollment the number of tuition fee waivers to be granted by any institution.